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10/691,262	10/22/2003	Eric M. Peterson	200310181-1	5440

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EXAMINER
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JOO, JOSHUA

ART UNIT	PAPER NUMBER
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2454

NOTIFICATION DATE	DELIVERY MODE
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06/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/691,262	<b>Applicant(s)</b> PETERSON ET AL.	
	<b>Examiner</b> JOSHUA JOO	<b>Art Unit</b> 2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-8, 10-13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8, 10-13, 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Detailed Action***

This Office action is in response to Applicant's communication filed on March 10, 2010.

Claims 1-3, 6-8, 10-13, 16-20 are pending for examination.

**Response to Arguments**

Applicant's arguments with respect to claims 1-3, 6-8, 10-13, 16-20 have been considered but are moot in view of the new ground(s) of rejection. Applicant also argued that:

(1) Independent claim 1 recites a network query client and a network query server. Clients and servers are tangible computer devices. Computer devices are statutory under 35 U.S.C. 101.

In response, computer devices are statutory under 35 U.S.C. 101. However, Examiner respectfully disagrees that the claimed client and server are directed to tangible computer devices. For instance, IEEE 100, The Authoritative Dictionary of IEEE Standards Terms, 2000, defines "client" as "software that uses the interface" or "in networking, a station or program requesting a service"; and "server" as "the software component on one device that provides services for use by clients on the same or another device". Newton's Telecom Dictionary, 2001, defines "server" as "A server is a program which provides some service to other (client) programs". Applicant's specification also recites "Network query server 12 may comprise hardware and/or software" (Paragraph 0010), which suggests that the network query server may comprise software. Client and server are not required to be computers and thus cover subject matter that is not statutory.

Examiner suggests amending the client and/or server to include hardware or include "computer" in the claims if supported by Applicant's specification to overcome the 35 U.S.C. 101 rejection.

**Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Art Unit: 2454

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3, 16-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 1, Applicant is seeking to patent an analyzer comprising a client and server. According to Applicant's specification, the server is not required to be hardware and could be software (Paragraph 0010). Based on the broadest reasonable interpretation, the client and server could be considered as software. The analyzer, which does not comprise any functional hardware, could be considered as software. Software does not meet one of the four categories of invention and is not statutory.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czarnik et al. US Patent No. 5,812,529 (Czarnik hereinafter), in view of Leonardos, US Patent No. 6,778,972 (Leonardos hereinafter).

As per claim 1, Czarnik teaches substantially the invention as claimed including a network usage analyzer, comprising:

a network query client residing in a network (col. 3, lines 33-35. Client.); and

Art Unit: 2454

a network query server residing in a second network (col. 3, lines 45-51, lines 52-55. Server connected to sentries.),

wherein said network query client is configured to sending authentication information to the network query server, to send a query to the network query server related to how resources in the second network are used (col. 5, lines 23-27. Client identifies itself to server. col. 3, lines 23-27, 34-44; col. 9, lines 25-31. Client sends mission request to server. ),

wherein the network query server is configured to configured to send authentication approval information to the network query client (col. 5, lines 19-30. Determine client is valid and establish connection.), to collect data related to how resources in the second network are used by requesting data related to how the resources in the second network are used from a network mediation system and receiving the requested data from the network mediation system, and to send collected data to the network query client (col. 3, lines 40-43; col. 7, lines 4-14, 46-59; col. 9, lines 54-59; col. 10, lines 31-35. Send request to sentries and collect data.), wherein at least one query is formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism (col. 6, lines 49-56; col. 9, lines 25-31. URL. Request by web page.)

Czarnik does not specifically teach that server residing in the second network is protected by a firewall.

Leonardos teaches of a client residing in a first network and a server in a second network protected by a firewall, wherein the client is configured to send authentication information to the server, and the server is configured to send authentication approval information to the client, wherein at least one query is formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism (col. 5, lines 54-60, 66-col. 6, line 4; col. 8, line 49-col. 9, line 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network server to reside in a second network protected by a firewall, to

Art Unit: 2454

send authentication information to the network query server, and for the network query server to be configured to send authentication approval information to the network query client, wherein at least one query is formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism. The motivation for the suggested combination is that Leonardos' teachings would improve Czarnik's teachings by securing contents of the server and preventing unauthorized access to the server.

As per claim 6, Czarnik teaches substantially the invention as claimed including a method for accessing information of resource usage in a first network, comprising:

establishing a communication channel between a network query client residing in a network query server residing in the first network (col. 3, lines 33-35. Client communicates with server.);

sending, by the network query client, authenticating information to the network query server (col. 5, lines 23-27. Client identifies itself to server.);

sending, by the network query server, authentication approval information to the network query client (col. 5, lines 19-30. Determine client is valid and establish connection.);

sending, by the network query client, at least one network usage query related to how resources in the first network are used (col. 3, lines 23-27, 34-44; col. 9, lines 25-31. Client sends mission request to server.);

receiving, by the network query server, the at least one network usage query from the network query client, wherein the at least one network usage query is formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism (col. 3, lines 23-27, 34-44; col. 9, lines 25-31. Mission request from client. col. 6, lines 49-56; col. 9, lines 25-31. URL. Request by web page.);

Art Unit: 2454

collecting, by the network query server, information in response to the network usage query by requesting data related to how the resources in the first network are used from a network mediation system and receiving the requested data from the network mediation system (col. 3, lines 40-43; col. 7, lines 4-14, 46-59; col. 9, lines 54-59; col. 10, lines 31-35. Send request to sentries and collect data); and

sending by the network query server, the collected information to the network query client (col. 3, lines 41-44. Server communicates mission results to client.).

Czarnik does not specifically teach the query server residing in the first network protected by a firewall.

Leonardos teaches of a server in a first network protected by a firewall, wherein the client sends authentication information to the server and the server sends authentication approval information to the client (col. 5, line 66-col. 6, line 4; col. 8, line 49-col. 9, line 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the server to reside in the first network protected by a firewall, for the client to send authentication information to the network query server, and for the network query server to send authentication approval information to the network query client. The motivation for the suggested combination is that Leonardos' teachings would improve Czarnik's teachings by securing contents of the server and preventing authorized access to the server.

As per claim 12, Czarnik teaches substantially the invention as claimed including a method for accessing information of resource usage in a first network, comprising:

establishing a communication channel between a network query client residing in a network and a network query server residing in the first network (col. 3, lines 33-35. Client communicates with server.);

sending, by the network query client, authenticating information to the network query server (col. 5, lines 23-27. Client identifies itself to server.);

Art Unit: 2454

sending, by the network query server, authentication approval information to the network query client (col. 5, lines 19-30. Determine client is valid and establish connection.);

sending, by the network query client, at least one network usage query related to how resources in the first network are used to the network query server, the at least one query formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism (col. 3, lines 23-27, 34-44; col. 9, lines 25-31. Client sends mission request to server. col. 6, lines 49-56; col. 9, lines 25-31. URL. Request by web page.);

collecting, by the network query server, network configuration information in response to the network usage query by requesting data related to how the resources in the first network are used from a network mediation system and receiving the requested data from the network mediation system (col. 3, lines 40-43; col. 7, lines 4-14, 46-59; col. 9, lines 54-59; col. 10, lines 31-35. Send request to sentries and collect data);

sending, by the network query server, the collected network configuration information to the network query client; and receiving, by the network query client, information related to the network configuration query collected by the network query server (col. 3, lines 41-44. Server communicate mission results to client.).

Czarnik does not specifically teach the server residing in the first network protected by a firewall.

Leonardos teaches of a client residing in a second network and a server in a first network protected by a firewall, wherein the client sends authentication information to the server and the server sends authentication approval information to the client (col. 5, line 66-col. 6, line 4; col. 8, line 49-col. 9, line 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query server to reside in the first network protected by a firewall, for the client to send authentication information to the network query server, and for the network



Art Unit: 2454

query server to send authentication approval information to the network query client. The motivation for the suggested combination is that Leonardos' teachings would improve Czarnik's teachings by securing contents of the server and preventing unauthorized access to the server.

As per claim 2, Czarnik and Leonardos teach the network usage analyzer, as set forth in claim 1. Czarnik teaches wherein the network query client and network query server are operable to communicate using a common protocol (col. 6, lines 49-56; col. 9, lines 25-31. URL. Request by web page, i.e. HTTP. col. 5, lines 25-30. TCP/IP).

As per claim 11, Czarnik and Leonardos teach the method, as set forth in claim 6. Czarnik teaches the method further comprising receiving, by the network query server, network configuration information (col. 3, lines 24-28; col. 7, lines 46-52. Source/destination, routing.).

Claims 3, 7-8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czarnik and Leonardos, in view of Steele et al. US Patent No. 7,257,581 (Steele hereinafter).

As per claim 3, Czarnik does not specifically teach the network usage analyzer, as set forth in claim 1, wherein the network query client and network query server are operable to communicate using Simple Object Access Protocol.

Steele teaches of a client and a server operable to communicate using Simple Object Access Protocol (col. 8, lines 10-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query client and network query server to be operable to communicate using Simple Object Access Protocol. The motivation for the suggested combination is that

Art Unit: 2454

Steele's teachings would improve the suggested system by enabling communication using a protocol that requires minimal overhead and provides interoperability between different software.

As per claim 7, Czarnik does not specifically teach the method, as set forth in claim 6, wherein establishing a communication channel comprises establishing a communication channel without reconfiguring the firewall.

Steele teaches of establishing a communication channel without reconfiguring a firewall (col. 8, lines 10-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to establish a communication channel without reconfiguring a firewall. The motivation for the suggested combination is that Steele's teachings would improve the suggested system by reducing work in establishing a communication and enabling communication using a protocol that requires minimal overhead.

As per claim 8, Czarnik does not specifically teach the method, as set forth in claim 6, wherein establishing a communication channel comprises establishing a communication channel using Simple Object Access Protocol.

Steele teaches of a client and a server operable to communicate using Simple Object Access Protocol (col. 8, lines 10-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query client and network query server to be operable to communicate using Simple Object Access Protocol. The motivation for the suggested combination is that Steele's teachings would improve the suggested system by enabling communication using a protocol that requires minimal overhead and provides interoperability between different software.

As per claim 13, Czarnik does not specifically teach the method, as set forth in claim 12, wherein establishing a communication channel comprises establishing a communication channel using Simple Object Access Protocol.

Steele teaches of a client and a server operable to communicate using Simple Object Access Protocol (col. 8, lines 10-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query client and network query server to be operable to communicate using Simple Object Access Protocol. The motivation for the suggested combination is that Steele's teachings would improve the suggested system by enabling communication using a protocol that requires minimal overhead and provides interoperability between different software.

Claim 10 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Czarnik and Leonardos, in view of Howard et al. US Patent No. 6,584,505 (Howard hereinafter).

As per claim 10, Czarnik does not specifically teach the method, as set forth in claim 6, further comprising: periodically receiving, by the query server, authentication information from the network query client; and sending, by the network query server, authentication approval to the network query client in response to the periodically received authenticating information.

Howard teaches of periodically receiving, by a server, authentication information from a client; and sending, by the server, authentication approval to the client in response to the periodically received authenticating information (col. 6, lines 5-16, 66-col. 7, lines 16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to periodically receive, by a server, authentication information from a client; and send, by the server, authentication approval to the client in response to the periodically received

Art Unit: 2454

authenticating information. The motivation for the suggested combination is that Howard's teachings would improve the suggested system by reducing the opportunity for unauthorized access to a server.

Claims 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czarnik and Leonardos, in view of Shum, US Publication No. 2003/0009507 (Shum hereinafter).

As per claim 16, Czarnik does not specifically teach the network usage analyzer, as set forth in claim 1, wherein the network query client transforms the usage data into business information.

Shum teaches of transforming usage data into business information (Paragraphs 0046-0048; claim 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query client transforms the usage data into business information. The motivation for the suggested combination is that Shum's teachings would improve the suggested system by utilizing the data for performance management and planning business workflows.

As per claim 18, Shanumgam does not specifically teach the method as set forth in claim 6, further comprising, sending, by the network query server, the collected information to the network query client. Shanumgam does not specifically of sending in order to transform the collected information into business information.

Shum teaches of collecting information and transforming the collected information into business information (Paragraphs 0046-0048; claim 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query client transforms the collected information into business information. The motivation for the suggested combination is that Shum's teachings would improve the suggested system by utilizing the data for performance management and planning business workflows.

As per claim 19, Shanumgam does not specifically teach the method, as set forth in claim 12, further comprising transforming the usage data into business information.

Shum teaches of transforming usage data into business information (Paragraphs 0046-0048; claim 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the network query client transforms the usage data into business information. The motivation for the suggested combination is that Shum's teachings would improve the suggested system by utilizing the data for performance management and planning business workflows.

Claims 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czarnik and Leonardos, in view of McKinnon, III et al. US Publication No. 2009/0070454 (McKinnon hereinafter).

As per claim 17, Czarnik does not specifically teach the network usage analyzer, as set forth in claim 1 wherein the usage data comprises a metric measuring network usage levels based on at least one of geographical region, a time of day, a particular user, and a type of service plan.

McKinnon teaches of collecting usage data comprises a metric measuring network usage levels based on at least one of geographical region, a time of day, a particular user, and a type of service plan (Paragraphs 0024-0025, 0191, 0193).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the usage data to comprise a metric measuring network usage levels based on at least one of geographical region, a time of day, a particular user, and a type of service plan. The motivation for the suggested combination is that McKinnon's teachings would improve the suggested system by providing a detailed monitoring and assessment of the network. Furthermore, McKinnon's

Art Unit: 2454

teachings would allow dynamic modification of service levels by service providers based on monitored information.

As per claim 20, Czarnik teaches the method, as set forth in claim 12 further comprising sending, by the network query client, at least one network usage query to the network query server. Czarnik does not specifically teach the at least one network usage query requesting a metric measuring network usage levels based on at least one of geographical region, a time of day, a particular user, and a type of service plan.

McKinnon teaches of requesting metric measuring network usage based on at least one of geographical region, a time of day, a particular user, and a type of service plan (Paragraphs 0024-0025, 0106, 0191, 0193).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to request metric measuring network usage based on at least one of geographical region, a time of day, a particular user, and a type of service plan. The motivation for the suggested combination is that McKinnon's teachings would improve the suggested system by providing a detailed monitoring and assessment of the network. Furthermore, McKinnon's teachings would allow dynamic modification of service levels by service providers based on monitored information.

### **Conclusion**

Examiner has cited particular sections of the reference(s) that are applied to the claims. While the sections are cited for convenience and are representative of the teachings of the prior art, other sections of the reference(s) may be relevant and applicable to the claims. It is respectfully requested that Applicant fully consider the reference(s) in its entirety when responding to the Office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Joo whose telephone number is 571 272-3966. The examiner can normally be reached on Monday to Friday 7 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/691,262

Page 15

Art Unit: 2454

/J. J./

Examiner, Art Unit 2454

/NATHAN FLYNN/

Supervisory Patent Examiner, Art Unit 2454